

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KEVIN FREDERICK COLEMAN,
a/k/a "Gusto,"

Defendant.

NO. CR09-325RSM

ORDER GRANTING UNITED
STATES' APPEAL AND
DETENTION ORDER

THIS MATTER comes before the Court on the United States' Appeal of U.S. Magistrate Judge Mary Alice Theiler's decision to deny the government's motion to detain Defendant (Docket # 11).

The Court reviewed the government's motion, the Defendant's response (Docket # 14), and the recording of the detention hearing before Judge Theiler held on October 23, 2009. The Court also heard from counsel for both parties. Being otherwise fully advised, the Court finds and rules as follows:

1. Defendant is charged by indictment with one count of Possession of Crack Cocaine with the Intent to Distribute, and one count of Distribution of Crack Cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B). There is therefore probable cause to believe that Defendant committed both offenses.

1 2. Both charged offenses carry a mandatory minimum sentence of sixty
2 months, and a maximum term of 40 years. The offenses charged in the indictment trigger
3 a rebuttable presumption of detention pursuant to 18 U.S.C. § 3142(e). The defendant
4 therefore had a burden of producing evidence that he does not pose a danger to the
5 community or risk of flight in order to rebut the presumption. The government retains the
6 ultimate burden of persuasion on both issues.

7 3. U.S. Magistrate Judge Mary Alice Theiler decided, on October 23, 2009,
8 that defendant could be released on conditions. The Court notes that Judge Theiler noted
9 that she made the decision with “some trepidation,” an acknowledgment that the detention
10 issue in this case was an exceedingly close call. The Court also notes that the parties
11 presented some additional factual matters as part of this appeal that were not available to
12 Judge Theiler when she made her original decision.

13 4. The standard of review of the Magistrate Judge’s decision below is *de novo*.

14 5. The Court is concerned with the evidence regarding Defendant’s
15 association with others currently engaged in criminal activity; the presence of magazines
16 belonging to an assault rifle, trigger locks, body armor, and a concealed weapons permit
17 (in the name of Defendant’s girlfriend) at Defendant’s residence. The Court is also
18 concerned about the reported presence of a videotape documenting a fight or beating of a
19 third person. These concerns are heightened by Defendant’s prior convictions for drug
20 and weapons offenses.

21 6. The Court notes the seriousness of the offense, and notes that Defendant
22 potentially faces a lengthy sentence, should he be convicted.

23 7. This Court, having reviewed the materials and facts set forth above, and the
24 factors set forth at 18 U.S.C. § 3142(g), hereby finds and rules that there is no condition
25 or combination of conditions that would reasonably assure future Court appearances
26 and/or the safety of other persons or the community.

27 ///

28 ///

It is therefore ORDERED:

1. The defendant shall be detained pending trial and committed to the custody of the Attorney General for confinement in a correction facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;
2. The defendant shall be afforded reasonable opportunity for private consultation with counsel;
3. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility in which the defendant is confined shall deliver the defendant to a United States Marshal for the purpose of an appearance in connection with a court proceeding; and
4. The clerk shall direct copies of this order to counsel for the United States, to counsel for the defendant, to the United States Marshal, and to the United States Pretrial Services Officer.

Dated this 2 Day of November, 2009.



RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE

Presented by:

JENNY A. DURKAN, United States Attorney

By: /s/ Vincent T. Lombardi
Vincent T. Lombardi
Assistant United States Attorney

Approved as to Form, Notice of Presentation Waived:

/s/ Michael Nance
Michael Nance
Attorney for Defendant